

(3) The names and addresses of the person making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) *Informal advice.* When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in §1626.18, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in §1626.18(a)(1) will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989. Redesignated at 68 FR 70152, Dec. 17, 2003]

**§ 1626.21 Effect of opinions and interpretations of the Commission.**

(a) Section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act, provides that:

In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment \* \* \* if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulations, order, ruling, approval or interpretation \* \* \* or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only (1) a written document, entitled "opinion letter," signed by the Legal Counsel on behalf of and as approved by the Commission, or (2) a written document issued in the conduct of litigation, entitled "opinion letter," signed by the General Counsel on behalf of and as approved by the Commission, or (3) matter published and specifically designated as such in the FEDERAL REGISTER, may be relied upon by any employer as a "written regulation, order, ruling, approval or interpreta-

tion" or "evidence of any administrative practice or enforcement policy" of the Commission "with respect to the class of employers to which he belongs," within the meaning of the statutory provisions quoted above.

(b) An opinion letter issued pursuant to paragraph (a)(1) of this section, when issued to the specific addressee, has no effect upon situations other than that of the specific addressee.

(c) When an opinion letter, as defined in paragraph (a)(1) of this section, is requested, the procedure stated in § 1626.17 shall be followed.

[48 FR 140, Jan. 3, 1983. Redesignated at 68 FR 70152, Dec. 17, 2003]

**§ 1626.22 Rules to be liberally construed.**

(a) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of this Act and any other acts administered by the Commission.

(b) Whenever the Commission receives a charge or obtains information relating to possible violations of one of the statutes which it administers and the charge or information reveals possible violations of one or more of the other statutes which it administers, the Commission will treat such charges or information in accordance with all such relevant statutes.

(c) Whenever a charge is filed under one statute and it is subsequently believed that the alleged discrimination constitutes an unlawful employment practice under another statute administered and enforced by the Commission, the charge may be so amended and timeliness determined from the date of filing of the original charge.

[48 FR 140, Jan. 3, 1983. Redesignated at 68 FR 70152, Dec. 17, 2003]

**PART 1627—RECORDS TO BE MADE OR KEPT RELATING TO AGE: NOTICES TO BE POSTED: ADMINISTRATIVE EXEMPTIONS**

**Subpart A—General**

Sec.

1627.1 Purpose and scope.

## § 1627.1

### **Subpart B—Records To Be Made or Kept Relating to Age; Notices To Be Posted**

- 1627.2 Forms of records.
- 1627.3 Records to be kept by employers.
- 1627.4 Records to be kept by employment agencies.
- 1627.5 Records to be kept by labor organizations.
- 1627.6 Availability of records for inspection.
- 1627.7 Transcriptions and reports.
- 1627.8–1627.9 [Reserved]
- 1627.10 Notices to be posted.
- 1627.11 Petitions for recordkeeping exceptions.

### **Subpart C—Administrative Exemptions**

- 1627.15 Administrative exemptions; procedures.
- 1627.16 Specific exemptions.

### **Subpart D—Statutory Exemption**

- 1627.17 Calculating the amount of qualified retirement benefits for purposes of the exemption for bona fide executives or high policymaking employees.

AUTHORITY: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066, 29 U.S.C. 211; sec. 12, 29 U.S.C. 631, Pub. L. 99-592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

SOURCE: 44 FR 38459, July 2, 1979, unless otherwise noted.

### **Subpart A—General**

#### **§ 1627.1 Purpose and scope.**

(a) Section 7 of the Age Discrimination in Employment Act of 1967 (hereinafter referred to in this part as the Act) empowers the Commission to require the keeping of records which are necessary or appropriate for the administration of the Act in accordance with the powers contained in section 11 of the Fair Labor Standards Act of 1938. Subpart B of this part sets forth the recordkeeping and posting requirements which are prescribed by the Commission for employers, employment agencies, and labor organizations which are subject to the Act. Reference should be made to section 11 of the Act for definitions of the terms “employer”, “employment agency”, and “labor organization”. General interpretations of the Act and of this part are published in part 1625 of this chapter. This part also reflects pertinent delegations of the Commission’s duties.

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(b) Subpart C of this part sets forth the Commission’s rules under section 9 of the Act providing that the Commission may establish reasonable exemptions to and from any or all provisions of the Act as it may find necessary and proper in the public interest.

(c) Subpart D of this part sets forth the Commission’s regulations issued pursuant to section 12(c)(2) of the Act, providing that the Secretary of Labor, after consultation with the Secretary of the Treasury, shall prescribe the manner of calculating the amount of qualified retirement benefits for purposes of the exemption in section 12(c)(1) of the Act.

[44 FR 38459, July 2, 1979, as amended at 44 FR 66797, Nov. 21, 1979]

### **Subpart B—Records To Be Made or Kept Relating to Age; Notices To Be Posted**

#### **§ 1627.2 Forms of records.**

No particular order or form of records is required by the regulations in this part 1627. It is required only that the records contain in some form the information specified. If the information required is available in records kept for other purposes, or can be obtained readily by recomputing or extending data recorded in some other form, no further records are required to be made or kept on a routine basis by this part 1627.

#### **§ 1627.3 Records to be kept by employers.**

(a) Every employer shall make and keep for 3 years payroll or other records for each of his employees which contain:

- (1) Name;
- (2) Address;
- (3) Date of birth;
- (4) Occupation;
- (5) Rate of pay, and
- (6) Compensation earned each week.

(b)(1) Every employer who, in the regular course of his business, makes, obtains, or uses, any personnel or employment records related to the following, shall, except as provided in paragraphs (b) (3) and (4) of this section, keep them for a period of 1 year

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from the date of the personnel action to which any records relate:

(i) Job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual,

(ii) Promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee,

(iii) Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings,

(iv) Test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action,

(v) The results of any physical examination where such examination is considered by the employer in connection with any personnel action,

(vi) Any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work.

(2) Every employer shall keep on file any employee benefit plans such as pension and insurance plans, as well as copies of any seniority systems and merit systems which are in writing, for the full period the plan or system is in effect, and for at least 1 year after its termination. If the plan or system is not in writing, a memorandum fully outlining the terms of such plan or system and the manner in which it has been communicated to the affected employees, together with notations relating to any changes or revisions thereto, shall be kept on file for a like period.

(3) When an enforcement action is commenced under section 7 of the Act regarding a particular applicant or employee, the Commission or its authorized representative shall require the employer to retain any record required to be kept under paragraph (b) (1) or (2) of this section which is relative to such

action until the final disposition thereof.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

### § 1627.4 Records to be kept by employment agencies.

(a)(1) Every employment agency which, in the regular course of its business, makes, obtains, or uses, any records related to the following, shall, except as provided in paragraphs (a) (2) and (3) of this section, keep them for a period of 1 year from the date of the action to which the records relate:

(i) Placements;

(ii) Referrals, where an individual is referred to an employer for a known or reasonably anticipated job opening;

(iii) Job orders from employers seeking individuals for job openings;

(iv) Job applications, resumes, or any other form of employment inquiry or record of any individual which identifies his qualifications for employment, whether for a known job opening at the time of submission or for future referral to an employer;

(v) Test papers completed by applicants or candidates for any position which disclose the results of any agency-administered aptitude or other employment test considered by the agency in connection with any referrals;

(vi) Advertisements or notices relative to job openings.

(2) When an enforcement action is commenced under section 7 of the Act regarding a particular applicant, the Commission or its authorized representative shall require the employment agency to retain any record required to be kept under paragraph (a)(1) of this section which is relative to such action until the final disposition thereof.

(b) Whenever an employment agency has an obligation as an "employer" or a "labor organization" under the Act, the employment agency must also comply with the recordkeeping requirements

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set forth in §1627.3 or §1627.5, as appropriate.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

### § 1627.5 Records to be kept by labor organizations.

(a) Every labor organization shall keep current records identifying its members by name, address, and date of birth.

(b) Every labor organization shall, except as provided in paragraph (c) of this section, keep for a period of 1 year from the making thereof, a record of the name, address, and age of any individual seeking membership in the organization. An individual seeking membership is considered to be a person who files an application for membership or who, in some other manner, indicates a specific intention to be considered for membership, but does not include any individual who is serving for a stated limited probationary period prior to permanent employment and formal union membership. A person who merely makes an inquiry about the labor organization or, for example, about its general program, is not considered to be an individual seeking membership in a labor organization.

(c) When an enforcement action is commenced under section 7 of the Act regarding a labor organization, the Commission or its authorized representative shall require the labor organization to retain any record required to be kept under paragraph (b) of this section which is relative to such action until the final disposition thereof.

(d) Whenever a labor organization has an obligation as an “employer” or as an “employment agency” under the Act, the labor organization must also comply with the recordkeeping re-

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quirements set forth in §1627.3 or §1627.4, as appropriate.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

### § 1627.6 Availability of records for inspection.

(a) *Place records are to be kept.* The records required to be kept by this part shall be kept safe and accessible at the place of employment or business at which the individual to whom they relate is employed or has applied for employment or membership, or at one or more established central recordkeeping offices.

(b) *Inspection of records.* All records required by this part to be kept shall be made available for inspection and transcription by authorized representatives of the Commission during business hours generally observed by the office at which they are kept or in the community generally. Where records are maintained at a central recordkeeping office pursuant to paragraph (a) of this section, such records shall be made available at the office at which they would otherwise be required to be kept within 72 hours following request from the Commission or its authorized representative.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981]

### § 1627.7 Transcriptions and reports.

Every person required to maintain records under the Act shall make such extension, recomputation or transcriptions of his records and shall submit such reports concerning actions taken and limitations and classifications of individuals set forth in records

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as the Commission or its authorized representative may request in writing.

(Approved by the Office of Management and Budget under control number 3046-0018)

(Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[44 FR 38459, July 2, 1979, as amended at 46 FR 63268, Dec. 31, 1981]

### §§ 1627.8-1627.9 [Reserved]

#### § 1627.10 Notices to be posted.

Every employer, employment agency, and labor organization which has an obligation under the Age Discrimination in Employment Act of 1967 shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative. Such a notice must be posted in prominent and accessible places where it can readily be observed by employees, applicants for employment and union members.

#### § 1627.11 Petitions for recordkeeping exceptions.

(a) *Submission of petitions for relief.* Each employer, employment agency, or labor organization who for good cause wishes to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period or periods prescribed in this part, may submit in writing a petition to the Commission requesting such relief setting forth the reasons therefor and proposing alternative recordkeeping or record-retention procedures.

(b) *Action on petitions.* If, no review of the petition and after completion of any necessary or appropriate investigation supplementary thereto, the Commission shall find that the alternative procedure proposed, if granted, will not hamper or interfere with the enforcement of the Act, and will be of equivalent usefulness in its enforcement, the Commission may grant the petition subject to such conditions as it may determine appropriate and subject to revocation. Whenever any relief granted to any person is sought to be revoked for failure to comply with the conditions of the Commission, that person shall be notified in writing of the facts constituting such failure and

afforded an opportunity to achieve or demonstrate compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or any delay of the Commission in acting upon such petition shall not relieve any employer, employment agency, or labor organization from any obligations to comply with this part. However, the Commission shall give notice of the denial of any petition with due promptness.

### Subpart C—Administrative Exemptions

#### § 1627.15 Administrative exemptions; procedures.

(a) Section 9 of the Act provides that,

In accordance with the provisions of subchapter II of chapter 5, of title 5, United States Code, the Secretary of Labor \* \* \* may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

(b) The authority conferred on the Commission by section 9 of the Act to establish reasonable exemptions will be exercised with caution and due regard for the remedial purpose of the statute to promote employment of older persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment. Administrative action consistent with this statutory purpose may be taken under this section, with or without a request therefor, when found necessary and proper in the public interest in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a reasonable exemption from the Act's provisions will be granted only if it is decided, after notice published in the FEDERAL REGISTER giving all interested persons an opportunity to present data, views, or arguments, that a strong and affirmative showing has been made that such exemption is in fact necessary and proper in the public interest. Request for such exemption shall be submitted in writing to the Commission.

**§ 1627.16 Specific exemptions.**

(a) Pursuant to the authority contained in section 9 of the Act and in accordance with the procedure provided therein and in § 1627.15(b) of this part, it has been found necessary and proper in the public interest to exempt from all prohibitions of the Act all activities and programs under Federal contracts or grants, or carried out by the public employment services of the several States, designed exclusively to provide employment for, or to encourage the employment of, persons with special employment problems, including employment activities and programs under the Manpower Development and Training Act of 1962, as amended, and the Economic Opportunity Act of 1964, as amended, for persons among the long-term unemployed, handicapped, members of minority groups, older workers, or youth. Questions concerning the application of this exemption shall be referred to the Commission for decision.

(b) Any employer, employment agency, or labor organization the activities of which are exempt from the prohibitions of the Act under paragraph (a) of this section shall maintain and preserve records containing the same information and data that is required of employers, employment agencies, and labor organizations under §§ 1627.3, 1627.4, and 1627.5, respectively.

[44 FR 38459, July 2, 1979, as amended at 52 FR 32296, Aug. 27, 1987; 55 FR 24078, June 14, 1990; 57 FR 4158, Feb. 4, 1992]

**Subpart D—Statutory Exemption**

**§ 1627.17 Calculating the amount of qualified retirement benefits for purposes of the exemption for bona fide executives or high policymaking employees.**

(a) Section 12(c)(1) of the Act, added by the 1978 amendments and amended in 1984 and 1986, provides:

Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or

deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$44,000.

The Commission's interpretative statements regarding this exemption are set forth in section 1625 of this chapter.

(b) Section 12(c)(2) of the Act provides:

In applying the retirement benefit test of paragraph (a) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(c)(1) The requirement that an employee be entitled to the equivalent of a \$44,000 straight life annuity (with no ancillary benefits) is satisfied in any case where the employee has the option of receiving, during each year of his or her lifetime following retirement, an annual payment of at least \$44,000, or periodic payments on a more frequent basis which, in the aggregate, equal at least \$44,000 per year: Provided, however, that the portion of the retirement income figure attributable to Social Security, employee contributions, rollover contributions and contributions of prior employers is excluded in the manner described in paragraph (e) of this section. (A retirement benefit which excludes these amounts is sometimes referred to herein as a "qualified" retirement benefit.)

(2) The requirement is also met where the employee has the option of receiving, upon retirement, a lump sum payment with which it is possible to purchase a single life annuity (with no ancillary benefits) yielding at least \$44,000 per year as adjusted.

(3) The requirement is also satisfied where the employee is entitled to receive, upon retirement, benefits whose aggregate value, as of the date of the employee's retirement, with respect to those payments which are scheduled to be made within the period of life expectancy of the employee, is \$44,000 per year as adjusted.

(4) Where an employee has one or more of the options described in paragraphs (c)(1) through (3) of this section, but instead selects another option (or options), the test is also met. On the other hand, where an employee has no choice but to have certain benefits provided after his or her death, the value of these benefits may not be included in this determination.

(5) The determination of the value of those benefits which may be counted towards the \$44,000 requirement must be made on the basis of reasonable actuarial assumptions with respect to mortality and interest. For purposes of excluding from this determination any benefits which are available only after death, it is not necessary to determine the life expectancy of each person on an individual basis. A reasonable actuarial assumption with respect to mortality will suffice.

(6) The benefits computed under paragraphs (c)(1), (2) and (3) of this section shall be aggregated for purposes of determining whether the \$44,000 requirement has been met.

(d) The only retirement benefits which may be counted towards the \$44,000 annual benefit are those from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans. Such plans include, but are not limited to, stock bonus, thrift and simplified employee pensions. The value of benefits from any other employee benefit plans, such as health or life insurance, may not be counted.

(e) In calculating the value of a pension, profit-sharing, savings, or deferred compensation plan (or any combination of such plans), amounts attributable to Social Security, employee contributions, contributions of prior employers, and rollover contributions must be excluded. Specific rules are set forth below.

(1) *Social Security.* Amounts attributable to Social Security must be excluded. Since these amounts are readily determinable, no specific rules are deemed necessary.

(2) *Employee contributions.* Amounts attributable to employee contributions must be excluded. The regulations governing this requirement are based on section 411(c) of the Internal Revenue

Code and Treasury Regulations thereunder (§1.411(c)-(1)), relating to the allocation of accrued benefits between employer and employee contributions. Different calculations are needed to determine the amount of employee contributions, depending upon whether the retirement income plan is a defined contribution plan or a defined benefit plan. Defined contribution plans (also referred to as individual account plans) generally provide that each participant has an individual account and the participant's benefits are based solely on the account balance. No set benefit is promised in defined contribution plans, and the final amount is a result not only of the actual contributions, but also of other factors, such as investment gains and losses. Any retirement income plan which is not an individual account plan is a defined benefit plan. Defined benefit plans generally provide a definitely determinable benefit, by specifying either a flat monthly payment or a schedule of payments based on a formula (frequently involving salary and years of service), and they are funded according to actuarial principles over the employee's period of participation.

(i) *Defined contribution plans—(A) Separate accounts maintained.* If a separate account is maintained with respect to an employee's contributions and all income, expenses, gains and losses attributable thereto, the balance in such an account represents the amount attributable to employee contributions.

(B) *Separate accounts not maintained.* If a separate account is not maintained with respect to an employee's contributions and the income, expenses, gains and losses attributable thereto, the proportion of the total benefit attributable to employee contributions is determined by multiplying that benefit by a fraction:

(1) The numerator of which is the total amount of the employee's contributions under the plan (less withdrawals), and

(2) The denominator of which is the sum of the numerator and the total contributions made under the plan by the employer on behalf of the employee (less withdrawals).

*Example:* A defined contribution plan does not maintain separate accounts for employee

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contributions. An employee's annual retirement benefit under the plan is \$40,000. The employee has contributed \$96,000 and the employer has contributed \$144,000 to the employee's individual account; no withdrawals have been made. The amount of the \$40,000 annual benefit attributable to employee contributions is  $\$40,000 \times \$96,000 / \$96,000 + \$144,000 = \$16,000$ . Hence the employer's share of the \$40,000 annual retirement benefit is \$40,000 minus \$16,000 or \$24,000—too low to fall within the exemption.

(ii) *Defined benefit plans—(A) Separate accounts maintained.* If a separate account is maintained with respect to an employee's contributions and all income, expenses, gains and losses attributable thereto, the balance in such an account represents the amount attributable to employee contributions.

(B) *Separate accounts not maintained.* If a separate account is not maintained with respect to an employee's contributions and the income, expenses, gains and losses attributable thereto, all of the contributions made by an employee must be converted actuarially to a single life annuity (without ancillary benefits) commencing at the age of forced retirement. An employee's accumulated contributions are the sum of all contributions (mandatory and, if not separately accounted for, voluntary) made by the employee, together with interest on the sum of all such contributions compounded annually at the rate of 5 percent per annum from the time each such contribution was made until the date of retirement. *Provided, however,* That prior to the date any plan became subject to section 411(c) of the Internal Revenue Code, interest will be credited at the rate (if any) specified in the plan. The amount of the employee's accumulated contribution described in the previous sentence must be multiplied by an "appropriate conversion factor" in order to convert it to a single life annuity (without ancillary benefits) commencing at the age of actual retirement. The appropriate conversion factor depends upon the age of retirement. In accordance with Rev. Rul. 76-47, 1976-2 C.B. 109, the following conversion factors shall be used with respect to the specified retirement ages:

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Retirement age	Conversion factor per cent
65 through 66 .....	10
67 through 68 .....	11
69 .....	12

*Example:* An employee is scheduled to receive a pension from a defined benefit plan of \$50,000 per year. Over the years he has contributed \$150,000 to the plan, and at age 65 this amount, when contributions have been compounded at appropriate annual interest rates, is equal to \$240,000. In accordance with Rev. Rul. 76-47, 10 percent is an appropriate conversion factor. When the \$240,000 is multiplied by this conversion factor, the product is \$24,000, which represents that part of the \$50,000 annual pension payment which is attributable to employee contributions. The difference—\$26,000—represents the employer's contribution, which is too low to meet the test in the exemption.

(3) *Contributions of prior employers.* Amounts attributable to contributions of prior employers must be excluded.

(i) *Current employer distinguished from prior employers.* Under the section 12(c) exemption, for purposes of excluding contributions of prior employers, a prior employer is every previous employer of the employee except those previous employers which are members of a "controlled group of corporations" with, or "under common control" with, the employer which forces the employee to retire, as those terms are used in sections 414 (b) and 414(c) of the Internal Revenue Code, as modified by section 414(h) (26 U.S.C. 414(b), (c) and (h)).

(ii) *Benefits attributable to current employer and to prior employers.* Where the current employer maintains or contributes to a plan which is separate from plans maintained or contributed to by prior employers, the amount of the employee's benefit attributable to those prior employers can be readily determined. However, where the current employer maintains or contributes to the same plan as prior employers, the following rule shall apply. The benefit attributable to the current employer shall be the total benefit received by the employee, reduced by the benefit that the employee would have received from the plan if he or she had never worked for the current employer. For purposes of this calculation, it shall be assumed that all benefits have always



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been vested, even if benefits accrued as a result of service with a prior employer had not in fact been vested.

(4) *Rollover contributions.* Amounts attributable to rollover contributions must be excluded. For purposes of § 1627.17(e), a rollover contribution (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409(b)(3)(C) of the Internal Revenue Code) shall be treated as an employee contribution. These amounts have already been excluded as a result of the computations set forth in § 1627.17(e)(2). Accordingly, no separate calculation is necessary to comply with this requirement.

(Sec. 12(c)(1) of the Age Discrimination in Employment Act of 1967, as amended by sec. 802(c)(1) of the Older Americans Act Amendments of 1984, Pub. L. 98-459, 98 Stat. 1792))

[44 FR 66797, Nov. 21, 1979, as amended at 50 FR 2544, Jan. 17, 1985; 53 FR 5973, Feb. 29, 1988]

### PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

Sec.

1630.1 Purpose, applicability, and construction.

1630.2 Definitions.

1630.3 Exceptions to the definitions of “Disability” and “Qualified Individual with a Disability.”

1630.4 Discrimination prohibited.

1630.5 Limiting, segregating, and classifying.

1630.6 Contractual or other arrangements.

1630.7 Standards, criteria, or methods of administration.

1630.8 Relationship or association with an individual with a disability.

1630.9 Not making reasonable accommodation.

1630.10 Qualification standards, tests, and other selection criteria.

1630.11 Administration of tests.

1630.12 Retaliation and coercion.

1630.13 Prohibited medical examinations and inquiries.

1630.14 Medical examinations and inquiries specifically permitted.

1630.15 Defenses.

1630.16 Specific activities permitted.

APPENDIX TO PART 1630—INTERPRETIVE GUIDANCE ON TITLE I OF THE AMERICANS WITH DISABILITIES ACT

AUTHORITY: 42 U.S.C. 12116.

SOURCE: 56 FR 35734, July 26, 1991, unless otherwise noted.

#### § 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to “covered entities” as defined at § 1630.2(b).

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

#### § 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.